

Message Text

SECRET

PAGE 01 TEHRAN 00803 271516Z

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ACTION SS-25

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P R 271354Z JAN 75

FM AMEMBASSY TEHRAN

TO SECSTATE WASHDC PRIORITY 9964

INFO USMISSION USUN NEW YORK

AMEMBASSY COPENHAGEN

AMEMBASSY HELSINKI

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY STOCKHOLM

S E C R E T TEHRAN 0803

EXDIS

FOR D/LOS MOORE FROM OXMAN

DEPARTMENT PASS OASD/ISA (FOR MR. FRENCH) & CHAIRMAN JCS
(FOR RADM MORRIS)

USUN PASS AMB. STEVENSEN

HELSINKI FOR HOUSTON

E.O. 11652: GDS

TAGS: PLOS

SUBJ: LOS: STRAITS

SUMMARY: FINNISH LEGAL ADVISOR PAUL GUSTAFSSON, WHO WAS IN MOSCOW LAST WEEK, INFORMS ME SOVIETS HAVE TENTATIVELY AGREED "AT AGENCY LEVEL" WITH FINLAND TO APPLY NON-SUSPENDABLE INNOCENT PASSAGE RATHER THAN UNIMPEDED TRANSIT TO STRAITS AT ENTRANCE TO GULF OF BOTHNIA. FINLAND HAS INFORMED SWEDEN AND DENMARK OF CONVERSATIONS, AND REQUESTED SOVIETS TO CONSULT WITH USG. GUSTAFSSON ASKED FOR US SYMPATHETIC CONSIDERATION IN CONSULTATION WITH USSR, AND SAID FINLAND AND POSSIBLY SWEDEN WOULD SUPPORT UNIMPEDED PASSAGE IF GULF OF BOTHNIA PROBLEM

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SECRET

PAGE 02 TEHRAN 00803 271516Z

RESOLVED. HE ASKED FOR USG REPLY THROUGH AMEMBASSY HELSINKI

(HOUSTON) ASAP. SOVIETS WILL VISIT COPENHAGEN ON STRAITS IN EARLY FEBRUARY, AND HELSINKI LATER. END SUMMARY.

1. GUSTAFSSON MET WITH SOVIET LEGAL ADVISOR KHLESTOV, HIS DEPUTY ROMANOV, AND GENERAL BARABOLYA LAST WEEK IN MOSCOW. SOVIETS HAD JUST BEEN TO GREECE. SOVIETS DID NOT DESIRE CONFRONTATION WITH FINLAND AT CONFERENCE, AND DID NOT REGARD GULF OF BOTHNIA AS MAJOR ISSUE. DISCUSSION RESULTED IN TEXT IN PARA 2, APPARENTLY DRAFTED BY BARABOLYA.

2. BEGIN TEXT. THE PRINCIPLE OF NON-SUSPENDABLE INNOCENT PASSAGE SHALL BE APPLICABLE ALSO TO NARROW STRAITS WHICH LEAD FROM THE HIGH SEAS TO AN ENCLOSED BAY SURROUNDED BY THE TERRITORIAL WATERS OF ONE OR TWO OF THE STRAITS STATES CONCERNED. END TEXT.

3. SOVIET SUGGESTION TO INCLUDE THE WORDS "PROVIDED THE BAY IS NOT WIDELY USED FOR INTERNATIONAL NAVIGATION" WAS REJECTED BY FINLAND AS AMBIGUOUS. THE TEXT IN PARA 2 APPARENTLY RESULTED FROM AN EARLIER "EXCEPTION" TEXT THAT MAY HAVE BEEN A FINNISH DRAFT, AS FOLLOWS: "THIS PROVISION DOES NOT APPLY TO A NORROW STRAIT LEADING FROM THE HIGH SEAS TO A GULF SURROUNDED BY THE TERRITORIAL WATERS OF ONE OR TWO OF THE STRAIT STATES CONCERNED."

4. GUSTAFSSON NOTED THAT FINLAND AND DENMARK WERE CO-SPONSORS OF 6-MILE EXCEPTION, AND THAT TEXT IN PARA 2 WOULD NOT SOLVE DANISH PROBLEM, BUT WOULD PROBABLY SATISFY SWEDEN'S PRACTICAL PROBLEMS. HE WAS WORRIED ABOUT SOVIET OPPOSITION TO 6-MILE EXCEPTION, AND FELT THAT WITH RESOLUTION OF ITALIAN PROBLEM BY OTHER MEANS, IT MIGHT NOT SUCCEED. HE WAS UNCERTAIN OF SWEDISH REACTION BECAUSE OF ANTI-SUPERPOWER POLITICAL ASPECT OF THEIR STRAITS POSITION.

5. WHEN ASKED ABOUT SPECIFIC PROBLEMS FINLAND HAD, GUSTAFSSON REFERRED TO 1921 TREATY DIMILITARIZING AALAND ISLANDS, AND TO CONCERN THAT FREE TRANSIT INCLUDES ANCHORING. OXMAN NOTED THAT UK ARTICLES REQUIRED TRANSIT TO BE CONTINUOUS AND EXPEDITIOUS, BUT GUSTAFSSON SAID IT WAS UNCLEAR. HE SAID FINLAND AND PROBABLY SWEDEN WOULD VOTE AGAINST AND REFUSE TO RATIFY A STRAITS ARTICLE, OR A TREATY CONTAINING A STRAITS ARTICLE, THAT DID NOT RESOLVE THEIR PROBLEM.

SECRET

SECRET

PAGE 03 TEHRAN 00803 271516Z

6. ON OVERFLIGHT, THE SOVIETS NOTED THAT THEIR PROPOSAL ONLY APPLIED TO STRAITS "TRADITIONALLY" USED FOR OVERFLIGHT, AND WERE WILLING TO APPLY THIS LIMITATION TO DANISH STRAITS.

7. OXMAN REMARKED PERSONALLY THAT THE ENCLOSED SEA ASPECT OF THE PROPOSAL MIGHT GIVE US SOME DIFFICULTY, BECAUSE OF OTHER AREAS, ALTHOUGH IT WAS CLEAR IN THIS CASE THAT ONLY THE STRAITS

STATES BORDER THE GULF OF BOTHNIA. HE INQUIRED IF A PROVISION REGARDING THE RIGHTS OF STRAITS STATES OVER VESSELS HEADED TO OR FROM THEIR PORTS WOULD WORK. GUSTAFSSON SAID HE WOULD NEED TO SEE A TEXT. (GUSTAFSSON, LIKE OXMAN, WAS AWARE THAT THE ISSUE OF ENCLOSED AND SEMI-ENCLOSED SEAS APPEARED ON AALCC AGENDA THIS MORNING FOR FIRST TIME, POSSIBLY AT IRAN'S REQUEST.) NEVERTHELESS, IN FACE OF OXMAN'S DISCOMFORT, GUSTAFSSON SHOWED HIM ANOTHER TEXT ALONG THE FOLLOWING LINES: "THE RIGHT OF TRANSIT THROUGH INTERNATIONAL STRAITS SHALL NOT AFFECT INTERNATIONALLY AGREED OBLIGATIONS SPECIFICALLY RELATING TO THE COASTAL STATE WITH RESPECT TO IMPLEMENTING THESE OBLIGATIONS BY THE COASTAL STATE AS WELL AS BY OTHER STATES." THE REFERENCE TO "OBLIGATIONS" IS TO THE 1921 TREATY. THE SOVIETS SAID THIS TEXT MIGHT BE ADDED TO THE EXCEPTION FOR THE TURKISH STRAITS IN THEIR ARTICLE, BUT IT IS UNCLEAR IF THEY ACCEPTED THIS APPROACH.

8. GUSTAFSSON SAID THE SOVIETS DO NOT REGARD FREE TRANSIT AS APPLICABLE TO INTERNAL WATERS AND ASKED OUR VIEW. OXMAN REPLIED THAT HE DID NOT BELIEVE A SYSTEM OF STRAIGHT BASELINES COULD HAVE THE EFFECT OF ELIMINATING THE APPLICABILITY OF THE TRANSIT RIGHT.

9. COMMENT. OUR PROBLEM IN PRINCIPLE IS THAT THE STRAITS IN QUESTION DO CONNECT TWO PARTS OF THE HIGH SEAS, AND ARE THE ONLY ROUTE. WHILE PLAYING WITH ENCLOSED SEA CONCEPTS IS DANGEROUS, A POSSIBLE WAY OUT IS TO RELY ON THE FACT THAT THE TWO STRAITS STATES ARE THE ONLY RIPARIAN STATES. I PREFER THE APPROACH I QUESTIONED GUSTAFSSON ABOUT, WHICH WE TOYED WITH OURSELVES AT ONE TIME, SINCE IT RESTS ON A PORT ENTRY THEORY, WHILE IT DOES NOT RPT NOT AFFECT UNIMPEDED TRANSIT THAT DOES NOT INVOLVE PORT VISITS, IT IS BETTER FOR THE COASTAL STATE ON PASSAGE THAT DOES INVOLVE PORT VISITS THAN NON-SUSPENDABLE INNOCENT PASSAGE. IN THIS REGARD, IT IS USEFUL TO RECALL THAT
SECRET

SECRET

PAGE 04 TEHRAN 00803 271516Z

THE RECENT DIFFICULTY WITH SWEDEN AND THE ONE WITH FINLAND SOME YEARS AGO BOTH DID INVOLVE PORT VISITS TO THE RIPARIAN STATE CONCERNED. ACCORDINGLY, I RECOMMEND THE DEPARTMENT CONSIDER A TEXT ALONG THE FOLLOWING ROUGH LINES: NOTHING HEREIN AFFECTS THE RIGHT OF A STATE BORDERING A STRAIT TO IMPLEMENT CONDITIONS OF ENTRY TO ITS PORTS AND TO ITS AIRSPACE OUTSIDE THE STRAIT.
MIKLOS

NOTE BY OC/T: NOT PASSED OASD/ISA,JCS.

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